

NLRB Fails To File Appeal To The Supreme Court For Review Of Its "Poster Rule"

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It looks like the NLRB's proposed "Poster Rule" is officially dead. In 2011, the NLRB proposed issuing a rule known as the "Notification of Employee Rights under the National Labor Relations Act", which commonly was referred to as the "Poster Rule." The rule was issued pursuant to the Board's seldom used rulemaking authority, and it would have obligated millions of companies around the country to display an 11-by-17-inch notice in a conspicuous location explaining the rights of workers to join a union and bargain collectively to improve wages and working conditions.

Various business groups, however, challenged the Poster Rule in federal courts, and last year two US Courts of Appeal struck down the rule. In May 2013, a panel of Judges for the DC Circuit Court of Appeals invalidated the Poster Rule and held that it violated companies' free speech rights. One month later the 4th Circuit Court of Appeals also struck down the rule, but on different grounds. The 4th Circuit held that the Board did not have authority to enact the rule because the NLRA does not vest the Board with authority to impose a general notice posting rule on employers.

January 2, 2014 marked the NLRB's deadline to file a petition with the US Supreme Court to review the challenges to its Poster Rule, and the Board failed to file such a petition with the Court. Accordingly, it appears the Poster Rule is dead – at least for now. As we've noted on the Blog, the NLRB has a full 5 members for the first time in years, and more rulemaking is expected from the Board in the coming months and years. It is not out of the question that some modified form of the "Poster Rule" could be attempted by the newly constituted NLRB.

Stay tuned.

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